SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

de JERSEY CJ

No BS8524 of 2006

JOHN DANIEL BURGESS	Applicant
and	
AUSTRALIAN ASSOCIATED MOTOR INSURERS LIMITED (ABN 92 004 791 744)	Respondent

BRISBANE

..DATE 20/10/2006

ORDER

THE CHIEF JUSTICE: The applicant was injured in the course of a motor vehicle accident on 29 July 2005. The respondent is the compulsory third party insurer of the vehicle driven by the person allegedly at fault.

The applicant served the respondent with a notice of claim under section 37 of the Motor Accident Insurance Act 1994. The respondent, pursuant to section 46A of the Act, has called on the applicant to submit to medico-legal examinations. The applicant is prepared to do so, but the parties are at odds as to the extent to which he should be reimbursed for related expenses.

In particular, the applicant has asked the respondent to meet expenses incurred in the use of his motor vehicle to attend the appointments, at the rate of 50 cents per kilometre, whereas the respondent will pay no more than 30 or 35 cents per kilometre. Additionally, the applicant has asked the respondent to meet his reasonable out-of-pocket expenses for parking, road tolls, and refreshments. To this point, the respondent has indicated a willingness to pay no more than an allowance of $10 per trip for parking.

The application was presented in writing by reference to the insurer's duty of cooperation under section 47(1). The issue should be determined, but is better determined by reference to section 46A(2). That provides (relevantly):

> "The claimant must comply with a request by the insurer to undergo, at the insurer's expense -

(a) a medical examination by a doctor to be selected by the claimant from a panel of at least three doctors nominated in the request, or..."

The words "the insurer's expense" do not embrace simply the doctor's fee for conducting the examination and providing the report but extend, in my view, to any expense occasioned by the claimant's compliance with the request. In this case, for example, where the claimant lives on the North Coast and is required to attend for examination in Brisbane, it is reasonable that he seek to use his own motor vehicle for that purpose, and the expense thereby incurred would be an expense within the contemplation of section 46A(2); likewise parking expenses incurred in attending the appointments on that basis, and reasonable expenses incurred for refreshment, for example.

In light of section 46A, the appropriate way to determine this application is to make a declaration to the effect that the applicant must comply with the respondent's request only on the basis the expense borne by the respondent include those things, and the declaration I will make will specify, of course, the rate per kilometre for use of the vehicle. The debate before me has focused almost exclusively on what rate should be set.

The competing positions emerge from the report of Mr Pallone from the NRMA, and the report of a chartered accountant Mr Dooley. Mr Pallone works to a figure of 49.47 cents per kilometre based on both running costs and what are termed standing costs referable to this particular vehicle in this year of its life, being the second. The running costs

comprise fuel and maintenance. The standing costs, which he includes, cover depreciation, registration and compulsory third party insurance, general insurance, and the RACQ membership fee.

The point of departure concerns whether standing costs should be brought to account. Mr Dooley expresses the view that they should not be brought to account because they are incurred anyway, regardless of the use of the vehicle for this particular application, and that is a point urged strongly now by Mr Douglas SC who appears for the respondent.

Mr Douglas's position is that the only standing cost which should arguably be brought into the assessment is depreciation. That concession was rightly made because the greater the use of the vehicle, of course, the more pronounced the depreciation.

In the end, I consider all of the standing costs should be allowed. I accept they are incurred whether or not this use occurs, save that this use does accentuate the depreciation. But they are costs borne by the applicant because of his ownership of the vehicle, and the fact is that the respondent, in a sense, derives the advantage of his preparedness to use his vehicle for this purpose, and on that basis alone I consider all of the costs associated with the vehicle apportioned to this limited use should be brought to account. That produces a figure of 49.47 cents per kilometre. That is the figure which, on the evidence, should be adopted, and for ease of calculation, I round it up to 50 cents per kilometre.

That figure may be put into a context from which lends it independent support. In the first place, there is a decision of the Court of Appeal in Commissioner of the Police Service -v- T.W. Merrin (2002) QCA 480 where the Court adopted a travel allowance rate of 50 cents per kilometre when reviewing costs of attending Court hearings.

Mr Douglas rightly points out I could not rationally have simply adopted that as the rate here on the basis of that decision, because there was apparently no evidence before the Court precisely establishing that rate. But it does suggest that the rate I have determined upon here, on the evidence, is appropriate.

That decision is now four years old. It would therefore, for present purposes, set the tariff very conservatively because of the dramatic increase in fuel costs which has taken place over intervening years.

There is also the circumstance that the Australian Taxation Office would in respect of a vehicle such as the applicant's allow deductions from assessable income tax at the rate of 67 cents per kilometre.

There will, therefore, be a declaration that the applicant must comply with the respondent's request under section 46A(2) of the Motor Accident Insurance Act 1994 only on the basis that the expense borne by the respondent include:

(a) reimbursement of expense in respect of the applicant's motor vehicle to be used for travel to and from the appointments, calculated at the rate of 50 cents per kilometre, and

(b) reimbursement of actual out-of-pocket expenses incurred in respect of parking and tolls, and reasonable expenses incurred for refreshment.

I say, finally, that although on one view this morning's inquiry may have seemed somewhat trivial, obviously enough this decision will affect the approach of compulsory third party insurers in many other cases coming before them.

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THE CHIEF JUSTICE: There will be an order that the respondent pay the applicant's costs of and incidental to the application to be assessed on an indemnity basis.
